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Proposed Regulation Agency Background Document

Agency name	DEPT. OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12VAC30-90
Regulation title	Methods and Standards for Establishing Payment Rates—Long Term Care Services
Action title	Discontinue Additional Reimbursement for Adult Specialized Care Services
Document preparation date	

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

This action proposes to discontinue the additional reimbursement to nursing facilities (NFs) for the complex care and rehabilitation parts of Specialized Care Services for adults. Specialized care services are those services provided to NF residents who have special medical needs, such as comprehensive rehabilitation, complex care, ventilator dependent, and persons diagnosed with AIDS. Prior to the adoption of the current Resource Utilization Groups (RUGs) reimbursement methodology, additional reimbursement to NFs was deemed appropriate for the higher levels of care required by specific residents. Once the RUGs methodology was implemented, however, additional reimbursement for comprehensive rehabilitation care and complex health care was no longer necessary as the RUGs system incorporated such additional care costs. The RUGs methodology does not address ventilator dependency and, therefore, it is being retained as a specially reimbursed category of Specialized Care services.

Basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The *Code of Virginia* (1950) as amended, §32.1-325, grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. The Code also provides, in the Administrative Process Act (APA) §§2.2-4007 and 2.2-4013, for this agency's promulgation of proposed regulations subject to the Governor's review and approval.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this proposed action is to discontinue an additional layer of reimbursement for Specialized Care Services that became redundant when the agency adopted the Resource Utilization Groups (RUGs) reimbursement methodology for nursing facilities on July 1, 2002. This action does not discontinue the coverage of such specialized care services as they are already incorporated into the RUGs methodology. Therefore, this proposed action is not expected to have any affect on the health, safety, or welfare of the citizens of the Commonwealth or of Medicaid residents in nursing facilities.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

The section of the State Plan for Medical Assistance that is affected by this action is Methods and Standards for Establishing Payment Rates—Long Term Care (Attachment 4.19-D, Supplement 1 (12 VAC 30-90)).

In late 1991, DMAS implemented a new level of nursing facility (NF) reimbursement based on patient care intensity and level of service, called Specialized Care Services, in order to make additional payments to nursing facilities. At the time of this implementation the then-current NF reimbursement methodology did not adequately address the costs of caring for residents who required Specialized Care Services.

Specialized Care patients were initially organized into four categories, Comprehensive Rehabilitation, Complex Care, Ventilator Dependent, and AIDS. The goal of the Specialized Care payment system was to encourage NFs to provide services to residents who require more intense services. Nursing facilities operated separate Specialized Care units within regular nursing facilities in order to accommodate patients who met the criteria for Specialized Care Services.

On July 1, 2002, the Nursing Home Payment System: Resource Utilization Groups (NHPS: RUGS) method was implemented as the regular nursing home payment system; it replaced the Patient Intensity Rating System (PIRS). The NHPS: RUGS system is facility-specific and is designed to make payment appropriate for the intensity of care that meets the needs of residents by grouping patients according to the severity of their condition and the level of care they require. The prior PIRS methodology was only marginally sensitive to the intensity of care being received by Medicaid nursing facility residents.

With the implementation of NHPS: RUGS, reimbursement more accurately reflected the intensity of care NF residents require, and a separate, additional Specialized Care reimbursement payment was no longer needed. The Comprehensive Rehabilitation and Complex Care components of Specialized Care are included in the NHPS: RUGS method, making these two components redundant. These proposed regulations change the criteria and scope of services that are included in the Adult Specialized Care reimbursement rate group to exclude the Comprehensive Rehabilitation and Complex Care components. Providers will receive reimbursement that reflects the required level of patient care through the RUGS-III nursing home payment methodology for adults who meet the previous criteria for Comprehensive Rehabilitation Care and Complex Care.

For the few nursing facility residents who require mechanical ventilation and those who have a daily dependence on device-based respiratory support, DMAS proposes to continue the previous payment methodology. Children who meet the requirements for Pediatric Specialized Care and adults who require mechanical ventilation or who have a complex tracheostomy and meet additional criteria will continue to be included in Specialized Care.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
 - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*

The advantages of the proposed changes include increased access to nursing facilities by individuals who receive Medicaid and who require a higher intensity care. The facilities that participate in Specialized Care will receive less in revenue under this revised Specialized Care system but can expect to see higher rates under the NHPS: RUGS system, commensurate with

the movement of high intensity care patients from Specialized Care units to regular nursing facilities. There are no disadvantages to the public or the Commonwealth.

Financial impact

Please identify the anticipated financial impact of the proposed regulation and at a minimum provide the following information:

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>There are no projected costs to the state for implementation of the proposed regulations. It is estimated that the Commonwealth will save approximately \$2,024,306 total funds (\$1,009,521 GF; \$1,014,785 NGF) in the first year of implementation, and it is expected that savings will continue in subsequent years.</p>
<p>Projected cost of the regulation on localities</p>	<p>There is no projected cost of the regulation on localities.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>The businesses that are likely to be affected by the regulation are all nursing facilities that are Medicaid providers and provide nursing home services to consumers who are eligible for nursing home services, approximately 255 facilities, of which, approximately 22 operate separate Specialized Care units. DMAS currently makes payment for nursing facility services based on their Nursing Home Payment System: Resource Utilization Groups (NHPS: RUGS). This payment system became effective on July 1, 2002. The payment methodology is facility-specific and is designed to make payment appropriate for the intensity of care that meets the needs of the residents. Prior to the implementation of the NHPS: RUGs, the Medicaid payment methodology was based on a system that was only marginally sensitive to the intensity of care being received by the Medicaid residents.</p>
<p>Agency’s best estimate of the number of such entities that will be affected</p>	<p>Approximately 22 nursing facilities could be affected by this action.</p>
<p>Projected cost of the regulation for affected individuals, businesses, or other entities</p>	<p>Nursing facilities with residents who move from specialized care to regular nursing care will experience a decrease in reimbursement for these residents. But facilities may experience an increase in their regular nursing care per diem rates if the average patient severity level of the regular nursing facility population increases, as a result of the move of higher severity level residents from specialized care to regular nursing care.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The General Assembly has mandated these changes to the State Plan through the Appropriations Act. Due to the legislative mandate, the agency has no discretion in whether to implement these changes.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

DMAS' Notice of Intended Regulatory Action was published in the July 28, 2003, *Virginia Register* (VR 19:23) for their public comment period from July 28th through August 27, 2003. No comments were received.

Impact on family

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

This regulatory action will not have any negative effects on the institution of the family or family stability. It will not increase or decrease disposable family income or erode the marital commitment. It will not discourage economic self-sufficiency, self-pride, or the assumption of family responsibilities.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

The substantive changes to existing regulations are as follows:

Current section number	Current requirement	Proposed change and rationale
12VAC30-90-264	Language established the Specialized Care categories of Comprehensive Rehabilitation Care and Complex Health Care for rate determination.	strikes this language as these two categories will now be included in the regular nursing facility NHPS: RUGS reimbursement methodology.
12VAC30-60-320	Language specifies criteria that must be met for adults to qualify for additional Specialized Care reimbursement rates.	The proposed change removes the criteria associated with Comprehensive Rehabilitation and Complex Health Care and includes criteria associated with the population requiring mechanical ventilation and complex tracheostomy.
12VAC30-60-40	Provides facility requirements related to services that must be available for persons in Comprehensive Rehabilitation Care.	Adds language to include adult ventilation/tracheostomy Specialized Care criteria and removes facility requirements related to services that must be available for persons in Comprehensive Rehabilitation Care. These services are no longer required, as the category of Comprehensive Rehabilitation Care is to be discontinued as eligible for additional reimbursement.